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Firm Defends Copter Deal

W. Germans Hit U.S. Action on Sale to N. Korea

By William Drozdiak
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BONN, July 13—For years, Kurt Behrens was regarded by Hughes Helicopter Inc. as one of its most successful foreign distributors. Even when buyers seemed scarce, the gregarious Dane and his West German firm, Delta-Avia Fluggeraete, chalked up impressive orders around the world.

When a deep recession afflicted the aircraft industry in 1983, Behrens was still going strong. He placed orders for nearly a hundred Model 500D and E civilian helicopters, virtually all of Hughes' production run at the time. He refused to disclose the final destination of the choppers, and Hughes executives did not press the issue, according to Behrens' account.

On a Saturday night last February, Behrens was watching television with his family when the evening news announced that the U.S. government had placed his company on a blacklist for selling 87 helicopters to North Korea. Hughes and other U.S. firms were banned from selling any more helicopters or spare parts to Delta-Avia.

Behrens could hardly believe his eyes and ears. He was proud of the sale, perfectly legitimate under the laws of West Germany, which, unlike the United States, does not ban civilian aircraft sales to North Korea.

The Bonn government cleared him of any wrongdoing after concluding that the helicopters could not serve military purposes. Behrens showed that the Model 500 version he delivered could only be used for purposes such as transport or agriculture spraying and that any attempt to turn them into gunships by adding missile pods would prove structurally impossible.

Five months later, the embargo remains in effect. It has taken Behrens' company to the brink of bankruptcy, threatening the jobs of his employees, and both he and the West German government are furious.

The Delta-Avia case is considered an intriguing example of the philosophical clash now intensifying between U.S. and European governments over trade with communist countries, as the western allies strive to reconcile commercial and security needs.

Washington wants to tighten the transfer

of technology to communist countries, while the Europeans are seeking greater trade flows through a more liberal definition of security-related products. Through the Paris-based Coordinating Committee, or Cocom, the western allies and Japan have agreed on a list of controlled items that should not be exported to potential adversaries.

The most intractable disputes have arisen over products not on the Cocom list that carry American restrictions but none in some European countries. In cases where Washington has tried to punish foreign distributors of U.S. products for selling to prohibited buyers, allied governments have objected vehemently to U.S. efforts to apply American law on an "extraterritorial" basis.

Officials here said they were convinced after a thorough investigation that Behrens acted in accordance with West German law. They said an urgent U.S. protest about the sale was rebuffed because Bonn found it lacked jurisdiction over the sale, holding that North Korea is not a forbidden client for West German firms, that civil helicopters are not on the Cocom list and that the helicopters never reached West Germany.

Behrens has admitted he transshipped the helicopters through Antwerp and Rotterdam after buying them from Hughes with clear title. The 87 aircraft, worth \$26 million in all, were assembled and test-flown as they arrived in North Korea at various stages between November 1983 and November 1984.

West German officials said they believed forcing Behrens and his firm into bankruptcy to set a stern example for other foreign distributors who sell to outlets proscribed by U.S. law seemed excessive and unjustified.

There could be no rational fear about compromising security interests through the transfer of classified goods since the technology in question is a generation old, the officials said. Moreover, the civilian helicopter models could not be transformed into military gunships without being taken apart and radically rebuilt because the vibrations from any missiles belatedly installed would shatter the craft. The military version of the Hughes Model 500 helicopters contain basic structural differences to withstand the backlash from fired weapons.

Defense Secretary Caspar W. Weinberger said at a news conference in Washington in May that the diversion of the helicopters to North Korea was a "serious loss" and that the United States planned to press criminal charges against those responsible for the shipment. A U.S. Commerce Department report held Hughes blameless in the transaction.

South Korea, which uses similar Hughes helicopters for reconnaissance and other military applications, filed a strong protest to the U.S. government about the sale, which may have contributed to the early decision to blacklist Delta-Avia, West German sources said.

Bonn officials suggested that the West German firm may have been singled out for harsh treatment because of a CIA report contending that West Germany is a leading transit station for high technology goods sent to communist countries, chiefly the Soviet Union and its East European allies.

In a lengthy interview at his firm's headquarters near Coblenz, Behrens admitted that he sold Hughes helicopters to other "undesirable" destinations.

"Hughes has used us in the past to do things they were not permitted," he said. "They never told me not to sell to certain countries, and I'm sure they knew where all their helicopters were going, and that includes North Korea."

"How can they pretend not to know where 90 percent of their production in a given year was going?" he asked. Hughes spokesmen have denied repeatedly that their company executives knew where the 87 helicopters would end up.

[A Hughes spokesman reached by telephone in California said Saturday that "investigations of our company by the State and Commerce departments have exonerated Hughes and would tend to suggest that statements (such as those by Behrens) are untrue."]

Behrens said his firm is prepared to comply with any restrictions Washington would impose in the future if his firm were removed from the blacklist.

Behrens believes he is "being made the scapegoat for this zealous, anticommunist trade policy" of the United States. He said his lawyer has sent letters to the Commerce Department, offering to abide by all U.S. regulations on future sales of helicopters and spare parts to North Korea or any other restricted country in exchange for lifting the embargo, or "temporary denial order," that threatens to ruin Delta-Avia. He said the lawyer has received no reply.